IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application (St.) No.26853 of 2004
in
APPEAL FROM ORDER NO.893 OF 2004
in
Draft Notice of Motion _____ of 2004
in
Short Cause Suit (Stamp) No.4251 of 2004

Smt.Gira @ Geera Dholakia & Anr. Appellants

Vs.

Union Bank of India & Ors. Respondents

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WITH

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IN
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in
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Smt.Gira @ Geera Dholakia & Anr. Appellants

Vs.

Union Bank of India & Ors. Respondents

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Shri Jai Chinai, Senior Counsel with Shri Sanjay Jain, Ms Vaishali Dholakia and Ms Smita Ranpise i/b S.K.Srivastav & Co. for the appellants.

Shri R.G.Bhat with Shri Ninesh Amin for Respondent No.1.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 19th OCTOBER, 2004.

P.C.

1. Heard. Admit. As regards interim relief is concerned, undisputedly, the appellants had raised the issue of fraud being played upon them by the respondents in relation to the documents of guarantee obtained by the respondents for repayment of the debt and the debtor is the husband and the father of the appellant Nos.1 and 2, respectively. Inspite of the fact that the alleged fraud was revealed to the appellants in the month of August, 2002, pursuant to the proceedings initiated by the bank before the Debt Recovery Tribunal, no proceedings challenging such documents having been obtained by practising alleged fraud were filed till September, 2004. Undoubtedly, the appellants though tried to pursue various other proceedings, they did not file the suit on the ground of alleged fraud till September last. It cannot be disputed, under any circumstances, that the issue of fraud could not have been gone into by the Debt Recovery Tribunal. Certainly the Debt Recovery Tribunal is entitled to ascertain whether the documents are validly or lawfully obtained but the issue of the fraud cannot be a subject matter of the

proceedings before the Debt Recovery Tribunal. It is only because the respondents have invoked the powers under Section 13 of the Securitisation and Reconstruction of Financial Assets and Security Interest Act, 2002, the suit has been filed on the allegation of fraud. Even as regards the said notice, under the said Act, it was issued in August, 2003 but it is stated to have been served upon the appellants on 5th December, 2003. There is no satisfactory explanation for the delay in approaching the Court for equitable relief in the matter. Since the relief sought to be prayed for, is of the equitable nature, it was necessary for the appellants to explain the delay in approaching the Court. Since the issue of fraud having been raised, it would be necessary to consider the same by perusing the entire materials which are placed on record to justify the prayer for the relief. It was necessary for the appellants to explain the delay in approaching the Court and the explanation ought to have been to the satisfaction of the Court. Neither the plaint nor the memo of appeal discloses any such satisfactory explanation for the delay in approaching the Court. In addition thereto, considering the grounds disclosed by the trial Court for refusing the injunctive relief, I do not find any

prima facie case being made out for grant of interim relief in the matter. Undisputedly, the proceedings for recovery of the amount have been pending since August, 2002. It involves huge amount of debt and being so, the balance of convenience does not lie in favour of the appellants, on the contrary, it lies in favour of the respondents. The grant of interim relief asked for is bound to result in irreparable loss to the respondents. The question of the appellants suffering loss, at this stage, does not arise, as they were well aware of the consequences which would follow in view of the provisions of Section 13 of the said Act, and yet they did not take immediate steps to approach the civil Court for interim relief inspite of the fact that their contention is that there had been fraud played by the respondents upon the appellants in relation to the documents of guarantee. In these circumstances, therefore, there is no case for grant of interim relief and hence the prayer for interim relief is rejected. The present Civil Application is accordingly rejected.

2. However, considering the fact that the appellants are utilising the flat in question for

residential purposes and Diwali festival is in the 2nd week of November, 2004, purely on the humanitarian ground the stay granted by the trial Court, which is in force till today, is extended and the same shall remain in force only in relation to the flat in question till 30th November, 2004.